IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

No. 280

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

## BRIEF OF RESPONDENT, PARAGON STEEL CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

(For List of Attorneys, see Inside Front Cover.)

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TO: The Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Respondent, Paragon Steel Corporation, respectfully opposes the granting of a writ of certiorari to review the Judgment of the Michigan Court of Appeals, Division 1, entered on December 2, 1968.

## INTRODUCTION

Respondent-Appellee appealed from the Michigan State Tax Commission on its individual record as did all the other Respondents named in the Petition. References to the record on Appeal in this Brief are to the record of Respondent, PARAGON STEEL CORPORATION, only.

## A. OPINIONS BELOW

Respondent-Appellee submits, in addition to the opinions set forth in the Brief, the Opinion of the Michigan State Tax Commission as to this Respondent in Appendix A and the Opinion of the Michigan Supreme Court in Appendix B.

## B. JURISDICTION

Respondent-Appellee denies the statements in the Petition with respect to jurisdiction and states that this Court is without jurisdiction to issue a writ of certiorari because the Petition has failed to comply with the time requirements of 28 U.S.C. 2101 (c) and Rule 22 of the Rules of the Supreme Court.

## C. COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

The following questions are presented for review:

1. Has the steel in question retained the indicia of importation at all times so as to retain immunity while in the hands of Respondent-Appellee?

2. Has the Michigan Court of Appeals, Division 1, interpreted and applied the provisions of Article I, Section 10, Clause 2 of the United States Constitution to the facts in this case consistent with the decisions of the United States Supreme Court?

## D. CONSTITUTIONAL PROVISIONS INVOLVED

The provision of the United States Constitution directly involved is adequately set forth in the Petition.

## E. COUNTER-STATEMENT OF THE CASE

Respondent-Appellee is a Michigan corporation with principal offices located in the City of Detroit. Its business is steel warehousing which is primarily the importation of foreign produced steel into Detroit where it is held for resale to domestic users.

In the ordinary course of business, PARAGON submits general inquiries to foreign steel mills for price and availability of steel for future delivery to it in Detroit. The inquiries are generally through brokers or agents who act either as agents for PARAGON or as agents for a foreign mill. When price and availability are determined, PARAGON submits detailed specifications and chemistry requirements via the agent referred to above. In the usual course of these transactions the steel is in fact not in exist-

ence at the time the order is placed. By way of example, steel is often ordered in November and December for shipment the following summer to accord with the opening and closing of navigation on the Great Lakes. (Record on Appeal, Item 4, Exhibit A; Item 5, pages 139-140.)

The agent who may be acting either for PARAGON, or a mill (usually with offices located in New York City) receives the specifications from PARAGON and transmits them to the mill. The agent also arranges for shipment to the port of Detroit by ship, customs entry, and arranges the method of payment to the mill. The price paid by PARAGON is a landed price including the price of steel, customs, insurance, freight and fees to the agent. When the steel is produced in the foreign country of origin, it is given distinctive markings at the foreign mill to identify it as the PARAGON order. The markings may be either contract numbers, purchase order numbers, or the name PARAGON. Regardless of the type of marking, it is easily and readily identified in the trade as the steel produced to the order of PARAGON (Record on Appeal, Item 4, Exhibit A). The steel is then shipped from the mill to a port (often times Antwerp, Belgium) where it is examined by an independent firm in the employ of PARAGON (Record on Appeal, Item 4, Exhibit A, Tab H) to determine that it is as ordered by PARAGON; after this examination on the dock in Europe, the steel is loaded aboard ship and PARAGON acquires title and is responsible not only for payment but all risks. The steel, until loaded aboard the ship for delivery to PARAGON via the port of Detroit belongs to the mill (Record on Appeal, Item 4, Exhibit A; Item 5, page 142).

The steel is landed at the port of Detroit in its original bundles with original markings and held by PARAGON for resale.

PARAGON does not engage in processing or manufacturing and no claim of this nature has been made at any time by either the Petitioner or the Respondent. Respondent makes no claim of immunity for steel in "broken bundles", purchased on the high seas or purchased from domestic mills.

Respondent filed its 1966 Personal Property Tax on February 20, 1966, reflecting taxable personal property in the amount of $156,840.00. On March 21, 1966, the Board of Review for the City of Detroit upheld the immunity on taxpayer's imported steel and causing assessment rolls for the City of Detroit to reflect taxable personal property of a value of $156,840.00.

The Petition is substantially correct with respect to proceedings before the Michigan State Tax Commission and the Michigan Court of Appeals, Division 1.

## ARGUMENT

### I.

Respondent-Appellee relies on the express language of Article I, Section 10, Clause 2 of the United States Constitution. The landmark decision of *Brown v. Maryland,* 12 Wheat 419; 6 L. ed. 678 set forth the first comprehensive judicial statement of what an import is for purposes of immunity, when speaking through Chief Justice Marshall the Court stated:

> "While remaining the property of the importer, in the original form or package in which it was imported, a tax upon it is too plainly a duty on import to escape the prohibition in the Constitution."

There is no question with regard to the fact that the steel is imported and that it is held for re-sale in its original

form and package. Respondent-Appellee claims no immunity for steel in "broken bundles" or steel purchased on the high seas.

The thrust of the Petition is twofold. First, that having illegally assessed imported merchandise the City of Detroit is embarrassed by the prospect of having to repay the wronged taxpayer for taxes paid under protest and secondly, that despite the plain meaning of the Constitution, the Petitioner would have the Court focus on obscure mechanics of trade rather than the substance of the transaction.

The first matter deserves no answer.

The second proposition has already been considered and answered by this Court in *Hooven and Allison Co. v. Evatt*, 324 U.S. 652; 89 L. ed. 1252.

> ". . . Petitioner's contracts of purchase are the inducing and efficient cause of bringing the merchandise into the country which is importation. Examination of the documents and consideration of the course of business can leave no doubt that the petitioner not only causes the importation . . ., but that the purpose and necessary consequence of it are to supply petitioner . . ."
>
> "For in determining the meaning and application of the constitutional provisions, we are concerned with matters of substance not of form. When the merchandise is brought from another country to this, the extent of its immunity from state taxation turns on the essential nature of the transaction considered in the light of the constitutional purpose, and not on the formalities with which the importation is conducted or the technical procedures by which it is effected . . ."
>
> ". . . It is evident that the constitutional prohibition envisages the present transaction quite as much as if the petitioner had sent his own agent

> abroad where he had purchased and paid for the merchandise and shipped it to petitioner in this country. The purpose and the result of the transaction are the same in either case . . ."

In the case of *Youngstown Sheet & Tube Co. v. Bowers,* 358 U.S. 534; 3 L. ed 2d 490 (1958) the Court carefully distinguishes that situation from *Brown v. Maryland* and *Hooven & Allison v. Evatt,* pointing out and approving recognition of immunity when imported goods are merely held in a warehouse in their original form and package for resale as opposed to the situation where they are so commingled with the common mass of property as to be indistinguishable. Added to this is that Respondent-Appellee is not a manufacturer stocking raw materials for his own finished product.

In the case of *Department of Revenue v. James B. Beam,* 377 U.S. 341; in dealing with a Kentucky tax on scotch whiskey imported in barrels for resale, where the tax was collected while the whiskey remained in unbroken packages in the hands of the importer and prior to resale or use by the importer, this Court stated:

> "The tax here in question is clearly of a kind prohibited by the Export-Import Clause. *Brown v. Maryland,* 12 Wheat. 419, 6 L.Ed. 678. As this Court stated almost a century ago in *Low v. Austin,* 13 Wall. 29, 20 L.Ed. 517, a case involving a California ad valorem tax on wine imported from France and stored in original cases in a San Francisco warehouse, 'the goods imported do not lose their character as imports, * * * until they have passed from the control of the importer or been broken up by him from their original cases. Whilst retaining their character as imports, a tax upon them, in any shape, is within the constitutional prohibition.'" Id, at 34. See *Hooven & Allison Co. v. Evatt,* 324 U.S. 652, 65 S. Ct. 870, 89 L. Ed. 1252.

## ARGUMENT

### II.

This case has been the subject of intense scrutiny, both administrative and judicial. The Michigan Personal Property Tax law, Compiled Laws of Michigan 1948, Section 211.29 provides for a Board of Review as does Title VI, Chapter II, Section 5, Charter of the City of Detroit, 1918 (1963 Ed.) as set forth in Appendix C. Simply put, the Board of Review, in this case, the Common Council for the City of Detroit, sitting as a committee of the whole, upon timely application, reviews tax assessments for determination as to legality and/or amount.

Respondent-Appellee on March 21, 1966, was upheld by this Board of Review for the City of Detroit in its contention that the steel claimed immune was not subject to taxation. Thereafter, the assessors appealed to the State Tax Commission which, despite stated "reservations" in its opinion ruled no immunity and directed the Respondent to seek a judicial determination. On the facts as set forth in the Counter-Statement of facts, the Michigan Court of Appeals Division 1, found that Article I, Section 10, Clause 2 of the United States Constitution did in fact apply to this situation and every case set forth in the Petition was considered in connection with the review. The Michigan Supreme Court denied Leave to Appeal in a simple one paragraph Opinion set forth in Appendix B.

While it would be presumptuous to presume to measure the court's discretion, it is true nevertheless that the questions involved have heretofore been determined by this Court, and the decision is in accord with the applicable decisions of this Court. The decision in question is neither in conflict with those of other courts of appeal nor has it

so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this court's power of supervision.

## RELIEF REQUESTED

Wherefore, Respondent-Appellee, Paragon Steel Corporation, respectfully requests that the Petition for Certiorari be denied.

Respectfully submitted,

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Dated: July 15, 1969



## APPENDIX A

### STATE OF MICHIGAN

### BEFORE THE MICHIGAN STATE TAX COMMISSION

At a meeting of the Michigan State Tax Commission held on the 26th day of January, 1967 at Lansing, Michigan.

In Re Petition No. 13-1071 of the Detroit Board of Assessors, City of Detroit, County of Wayne, State of Michigan, received on June 30, 1966, requesting to place upon the assessment roll property omitted therefrom, consisting of personal property in the form of steel inventory, belonging to Paragon Steel Corporation, 111 Adair, Detroit, Michigan.

The petitioner, the Detroit Board of Assessors, contends that personal property was erroneously omitted from the assessment rolls and the same should be placed upon the rolls in accordance with the provisions of Sec. 211.152 C. L. of Mich. 1948.

The Commission accepted the petition for examination and caused an investigation to be made to determine the assessable value of the personal property and to determine to whom the property should be assessed. A hearing was held on November 21, 1966 at Detroit, Michigan, at which hearing the taxpayer of the property in question was represented by counsel.

After consideration of the data presented at the hearing and the examination and investigation of the Commission's staff along with other written documents and exhibits of the taxpayer and the Detroit Board of Assessors the Commission finds:

1. The Detroit Board of Assessors in Petition No. 13-1071 asks the current assessment of $156,840 to be raised to $374,310 because of additional value revealed in an audit by a member of the Board of Assessors staff.

2. The investigation revealed that the issue involved in this dispute is not one of valuation but is a legal issue concerning the assessability of certain imported steel inventories. The city of Detroit claims that the steel in question has been purchased by the taxpayer from an importer and thereby has entered the channels of trade and become subject to ad valorem taxation. The taxpayer on the other hand claims that they are the "importers" and as such the steel in question retains its immunity from ad valorem taxation as an "imported product" under Article I, Section 10, Chapter 2 of the United States Constitution which reads:

> "No State shall, without the consent of the Congress, lay any imports (sic) or duties on Imports or Exports . . ."

3. Taxable property, both real and personal in the city of Detroit are assessed at a significant range of from 41% to 56% of their true cash value, or a properly weighted mathematical average for the local unit of 45.25% which is sustained by an equalization study made by the Commission in 1963, which data has been kept routinely current by the Commission and checked in the field by the Commission's staff.

4. That where property was omitted from the assessment roll erroneously it should be placed upon the assessment roll as provided in Sec. 211.152 C.L. of Mich. 1948.

After these findings of facts and the consideration of all the information contained therein the Commission still has reservations. On the basis of the documents, exhibits,

etc., there are doubts as to whether or not the goods in question are "imports" under Article I, Section 10, Chapter 2 of the United States Constitution. Taxation is the rule and there is a presumption that property is taxable unless it clearly appears that constitutional provisions or statutes grant an immunity from taxation. The burden of proof to establish immunity from ad valorem taxation rests on the taxpayer. The Commission is of the opinion that the taxpayer has failed to prove its claim of immunity from taxation based on the theory of imported goods. Therefore, the petition of the Board of Assessors of the city of Detroit is granted with reservation as to the final assessed valuation. This reservation is based upon the utilization of the correct assessment ratio to apply to true cash value in order to achieve the correct assessed valuation. It is determined in the opinion of the Commission that the true cash value of the property involved is $748,610 and the assessment level is 45.25% of true cash value. Therefore, appellant's assessment should be $338,700. Since the proposed assessment per Petition No. 13-1071 is $374,310 it is clearly apparent that the proposed assessment is significantly above and is not in accordance to the true cash value reduced to the local assessment level and the true cash value of all other real and personal property within the city of Detroit, reduced to such assessment level. The Commission fully appreciates the fact that the question presented in the petition is of a legal nature. We readily acknowledge that the courts are best adapted to resolving the legal questions involved just as the Commission believes itself to be the most proficient in questions of valuation. Should the taxpayer be dissatisfied and seek further relief available under the law, the Commission directs his attention to Sec. 211.53 of the C. L. of Mich. 1948, or in an action for a declaration of rights.

Wherefore, it is hereby ordered that the amount of $338,-700 be placed upon the assessment roll as the true and lawful value of such property.

February 6, 1967

Robert L. Purnell, Chairman

R. Gerald Barr, Commissioner

Ward G. Dexel, Commissioner

I hereby certify that this is a true copy of the order of the State Tax Commission on file in the State Tax Commission office as provided by Act 147, P.A. 1960.

/s/ Edward W. Kane
Secretary

## APPENDIX B

## ORDER DENYING STAY OF PROCEEDINGS

STATE OF MICHIGAN—SUPREME COURT

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

Present the Honorable Thomas E. Brennan, Chief Justice, John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court (T. G. Kavanagh, J., not participating), the application for leave to appeal is considered, and the same is hereby denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous. Plaintiffs' and appellants' request for a stay of proceedings is denied, as thereby being moot.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 20th day of March in the year of our Lord one thousand nine hundred and sixty-nine.

/s/ Harold Hoag,
Deputy Clerk.

## APPENDIX C

**Section 5, Chapter II, Title VI, Charter of the City of Detroit, 1918 (1963 Ed.)**

The common council, after receiving such assessment rolls, shall, at 10:00 A.M. on the Tuesday next following the first Monday in March, 1962, and the same each year thereafter, proceed to consider the same. Any person who has previously complained to the board of assessors as provided in section 21-7-2, considering himself aggrieved by the assessment of his property and the decision of the board of assessors with respect to the grounds specified by the complainant thereon, may appeal to the common council in person or by his legal representative. Such appeal shall be in writing and shall state, specifically, the grounds previously presented to the board of assessors and the matter complained of together with the address of the complainant. No other matter in connection therewith shall be considered by the council.

Such appeal shall be filed on or before the Tuesday following the first Monday in March and may not be filed thereafter. The common council may refer such assessment rolls and appeals to a committee of the council for consideration. The committee shall give notice to any person who has filed an appeal, as above provided, of the time and place of the meeting for the hearing thereof, which notice may be made in writing, by delivering the same to such person or leaving the same at his place of residence or place of business with some person of proper age and discretion, or by mail to the address of such complainant. While acting upon such assessment rolls or appeals, any member or employee of the board of assessors may, and on request of the council or such committee by resolution,

shall, meet with the council or such committee and make such explanations as he may deem requisite in any case. (C. O. 1954, ch. 81, §3; Ord. No. 598-F, §1.)

The common council or committee thereof shall hear and determine all appeals in a summary manner and correct any errors which they may discover in the assessment rolls, shall place thereon the names of any persons and the descriptions of any property not already assessed and assess the same and may increase or diminish any assessment as they see fit; provided, that the council or such committee shall not increase any assessment without giving a reasonable opportunity to persons owning or having charge of the same, if known, to appear and object thereto. The consideration of the assessment rolls and hearing of appeals may be continued from session to session for a period not less then five days or exceeding sixteen days after the date of their delivery to the council. The committee shall make a report to the common council in the premises and the council may adopt, change or amend the same, in whole or in part.

After due consideration thereof, such rolls shall, on or before the first Monday in April, be fully and finally confirmed by the common council, and shall remain as the basis, according to property valuation, of all taxes to be levied and collected in the city until another assessment shall have been made and confirmed as provided in this division. In the event that any date set forth in this division falls on a Sunday or legal holiday, such time shall be extended to the next succeeding business day. (C. O. 1954, ch. 81, §4; Ord. No. 244-G, §1; Ord. No. 246-G, §1; Ord. No. 290-G, §1.)

**Compiled Laws of Michigan 1948, Section 211.29, Michigan Statutes Annotated, Section 7.29**

Sec. 29. On the Tuesday next following the first Monday in March the board of review of each township shall meet at the office of the supervisor, at which time the supervisor shall submit to said board the assessment roll for the current year, as prepared by him, and the board shall proceed to examine and review the same, and during that day, and the day following, if necessary, said board, of its own motion, or on sufficient cause being shown by any person, shall add to said roll the names of persons, the value of personal property, and the description and value of real property liable to assessment in said township, omitted from such assessment roll; they shall correct all errors in the names of persons, in the descriptions of property upon such roll, and in the assessment and valuation of property thereon, and they shall cause to be done whatever else may be necessary to make said roll comply with the provisions of this act. The roll shall be reviewed according to the facts existing on the tax day. The board shall not add to the roll any property not subject to taxation on the tax day nor shall it remove from the roll any property subject to taxation on said day regardless of any change in the taxable status of such property since such day. The board shall pass upon each valuation and each interest, and shall enter the valuation of each, as fixed by it, in a separate column. The roll as prepared by the supervisor shall stand as approved and adopted as the act of the board of review, except as changed by a vote as herein provided. If for any cause a quorum does not assemble during the days above mentioned, the roll as prepared by the supervisor shall stand as if approved by the board of review. Notice of the date, time and place

of the meeting of the board of review shall be given at least 1 week prior to such meeting by publication in a generally circulated newspaper serving the area. Such notice shall appear in 3 successive issues of the newspaper where available; otherwise, by the posting of such notice in 5 conspicuous places in the township.

Whenever the board of review makes a change in the assessment of property or adds property to the assessment roll, the person chargeable with such assessment shall be promptly notified in such a manner as will assure him opportunity to attend the second meeting of the board of review provided in section 30 of this act.